

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 7466

Investigation into Petition Filed by Vermont       )  
Department of Public Service Re: Energy            )  
Efficiency Utility Structure – Phase 2                )

Order entered: 6/25/2010

**REPORT AND RECOMMENDATION RE PHASE 2 ISSUES**

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## **I. INTRODUCTION**

The Public Service Board's ("Board") November 24, 2009, Order in Phase 1 of this proceeding ("November 24 Order") determined that the structure of the Energy Efficiency Utility ("EEU") should be changed from a contract-based model to an Order of Appointment model as authorized by 30 V.S.A. § 209(d)(5). That same Order identified several implementation issues associated with the transition to such a new structure, and appointed me as Hearing Officer to conduct additional proceedings to address these issues. At the January 5, 2010, status conference at the beginning of Phase 2, the parties agreed that the Phase 2 issues could be grouped into three separate, but related, "tracks" — Phase 2 Issue Resolution, Initial Overall Performance Assessments, and Department of Public Service ("DPS") Benchmarking Study.

The Phase 2 Issue Resolution track includes: (1) specific substantive issues that the Board determined needed further discussion before they could be resolved; (2) the development of a model Order of Appointment; and (3) the development of a "Comprehensive Document" that describes the overall EEU program structure under the Order of Appointment model. This Proposal for Decision makes recommendations to the Board regarding the specific substantive issues included in the Phase 2 Issue Resolution track. It is appropriate to bring these issues to the Board for resolution now so that the Board's decisions regarding these specific issues can be incorporated into the model Order of Appointment and the Comprehensive Document that parties are currently developing.

## **II. PROCEDURAL HISTORY**

At the January 5, 2010, status conference, the parties agreed that not all parties needed to be involved in the initial discussions of each issue included in the Phase 2 Issue Resolution track, although any party was welcome to participate if it chose to. The parties agreed to divide the issues into three groups, identified as Groups A, B, and C, based on which parties wished to be involved in the initial discussions. The members of each group and the specific issues assigned to each group are identified in Section III of this Order. The parties involved in the initial discussions on an issue were to draft a recommended resolution for consideration by all parties in the Docket.

On January 25, 2010, the City of Burlington Electric Department ("BED") submitted an e-mail message with an attached example of the information BED provides each month to its Board of Electric Commissioners and the Board.<sup>1</sup> No party has objected to the admission of these documents into evidence, and I am admitting them as exh. BED-2.

On January 28, 2010, IBM submitted an e-mail message with an attached list of some of IBM's typical energy savings projects.<sup>2</sup> No party has objected to the admission of these documents into evidence, and I am admitting them as exh. IBM-1.

On January 29, 2010, VEIC filed via e-mail a cover letter, a residential customer release form, and a business customer release form. No party has objected to the admission of these documents into evidence, and I am admitting them as exhs. VEIC-9, VEIC-10, and VEIC-11, respectively.

On April 13, 2010, the DPS filed a letter and attachment containing the consensus recommendations of Group A. The specific recommendations are described further below. No party has objected to the admission of these documents into evidence, and I am admitting them as exhs. Joint-1 (the letter) and Joint-2 (the attachment).

On April 16, 2010, the DPS filed a letter and two attachments containing the recommendations of Group B.<sup>3</sup> The specific recommendations are described further below. No party has objected to the admission of these documents into evidence, and I am admitting them as exhs. Joint-3 (the letter), Joint-4 (Guidelines for Customer-Sited Generation and Combined Heat and Power Projects), and Joint-5 (Guidelines for an EEU's Responsibilities Regarding Demand Response).

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1. BED appeared to have provided copies of this information to only some parties. However, the information was posted to the Board's website, and parties were informed of this in my April 30, 2010, Order Re Schedule. In that same Order, I directed that parties should address in their comments due on May 7, 2010, whether they had any objections to the admission of the information filed by: BED on January 25, 2010; International Business Machines Corporation ("IBM") on January 28, 2010; Vermont Energy Investment Corporation ("VEIC") on January 29, 2010; the DPS on April 13, 2010, containing the Group A recommendations; and the DPS on April 16, 2010, containing the Group B recommendations. No party filed an objection to the admission of any of these documents.

2. IBM appeared to have provided copies of this information to only some parties. However, the information was posted to the Board's website, and parties were informed of this in my April 30, 2010, Order Re Schedule.

3. These were consensus recommendations, except with respect to the risk adjustment for combined heat-and-power projects.

On May 7, 2010, the DPS and Central Vermont Public Service Corporation ("CVPS") separately filed comments on the Group A and Group B recommendations and Group C issues. These comments are described further below.

No other party filed comments, and no party filed reply comments.

### **III. FINDINGS AND DISCUSSION**

Pursuant to 30 V.S.A. § 8, and based on the record and evidence before me, I present the following findings of fact and conclusions of law to the Board.

#### **A. Group A Issues**

Group A, which consisted of the DPS, VEIC,<sup>4</sup> BED<sup>5</sup> and the Contract Administrator<sup>6</sup> (collectively, "Group A"), was assigned the following issues:

1. issues associated with the possible start date of an initial Order of Appointment;
2. if an EEU's appointment is revoked because the EEU has materially breached the terms of its appointment or because of bankruptcy, whether a period of advance notice should be required, and if so, what that period of time should be;
3. clarification regarding whether one statewide Demand Resources Plan ("DRP") will be prepared, or whether each appointed EEU (if there are more than one) will prepare a separate DRP;
4. the threshold amount of additional funding acquired by an EEU that would require the Board to examine, on a case-by-case basis, whether Energy Efficiency Charge ("EEC") collections should be adjusted to reflect the additional funding;
5. the threshold amount of additional funding acquired by an EEU that would require the Board to examine, on a case-by-case basis, whether an EEU's goals should be adjusted, new performance indicators developed, or programmatic changes made; and

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4. VEIC currently serves, under contract to the Board, as the statewide EEU, known as Efficiency Vermont.

5. BED provides EEU services within its service territory.

6. The Contract Administrator is an independent contractor to the Board who assists the Board with the administration of the contract with the EEU.

6. which functions currently performed by the Contract Administrator should continue, and which entities should be assigned those functions (the role of mediator should not be included in the potential functions to be assigned to other entities).

Group A filed consensus recommendations on all of the above issues. The DPS filed a letter stating that it had no additional comments on these recommendations. CVPS filed comments supporting the Group A recommendations. No other party filed comments or reply comments on the Group A recommendations. I will discuss each of the issues addressed by Group A in turn.

### **1. Possible Start Date of an Initial Order of Appointment**

The November 24 Order did not determine a start date for an initial Order of Appointment. Instead, it stated:

Therefore, we expect it is more likely that the transition to a new structure will occur at the end of the current contract (December 31, 2011), particularly if the Initial OPA [Overall Performance Assessment] demonstrates that a competitive solicitation is warranted. If the Initial OPA does not demonstrate that a competitive solicitation is warranted, it may be possible to transition to a new structure prior to the end of the current contract. However, any such consideration of a mid-contract start date must take into account whether the benefits of an earlier transition outweigh the complexities of changing the structure in the middle of a contract cycle as well as how to synchronize the appointment period with the three-year cycles of performance reviews that will continue under the new structure.<sup>7</sup>

### **Findings**

1. If the Initial Overall Performance Assessments ("OPAs") result in a decision to solicit competitive bids for EEU provider(s), then the first Order of Appointment should commence in 2012, with the current EEUs providing efficiency services through the end of 2011 under the existing arrangements. Under this scenario, the three-year cycle of performance periods and the first OPAs during the Order of Appointment should occur consistent with the schedule outlined in the November 24 Order. Exh. Joint-1 at 2.

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7. Order of 11/24/09 at 46-47 (footnote omitted).

2. If the Initial OPAs result in a determination that the incumbents should be awarded Orders of Appointment, the Board should issue 12-year Orders of Appointment to the incumbents effectively immediately upon issuance. Under this scenario, the balance of time from the date of the Order of Appointment through December 31, 2011, should be considered a "Transition Period." Exh. Joint-1 at 2.

3. The benefits of an early transition to the Order of Appointment structure include allowing the incumbent EEUs to: (1) participate fully in a DRP proceeding, thereby facilitating a smooth transition from the contract model to an Order of Appointment model; and (2) begin the process of incorporating any new work scope specified within their Orders of Appointment into their service offerings. Exh. Joint-1 at 2.

4. The following terms should govern any Transition Period:

- During the Transition Period, the EEUs should be allowed to extend their scope as specified in the Orders of Appointment, but only to the extent they are able to do so with currently available resources.
- The initial DRP proceeding should be commenced after the Orders of Appointment are issued, with the goal of completing it by May of 2011 in order to allow for determination of budgets and goals for the next performance period.
- As part of the transition process, the EEUs should begin budgeting, accounting and tracking separately for "resource-acquisition" and "non-resource-acquisition" activities. For the Transition Period, this should be comprised of re-categorizing costs within each EEU's existing budget for 2011. These reorganized 2011 budgets should provide a useful baseline for setting non-resource-acquisition budgets as part of the first DRP process.
- The first Three-Year Performance Period under the Orders of Appointment should be the calendar years of 2012-2014 and continue every three years thereafter.
- The first OPAs under the Orders of Appointment should occur in the latter half of 2015. These OPAs should review performance in (at least) the 2009-2011 and the 2012-2014 periods.
- Following the 2015 OPA, the Board should determine whether to issue a new 12-year appointment beginning January 1, 2016, or to begin a solicitation process.

Exh. Joint-1 at 2.

## Discussion

An Initial OPA is a public performance-review process that will consider: the current EEU's record in meeting three-year performance indicators; the relative benchmarks of entities conducting similar efficiency resource acquisition efforts in other jurisdictions; a review of trends in the overall efficiency of the appointed entity's performance; and any other market information that may be useful in comparing the appointed entity's performance to that which might be available from an alternate entity.<sup>8</sup> In the November 24 Order, the Board determined that it should conduct Initial OPAs to determine whether there is cause to solicit proposals from alternative energy-efficiency providers who might provide greater net benefits to Vermont ratepayers relative to the current EEU providers.<sup>9</sup> Thus, the Initial OPAs will inform the Board's decision regarding whether it should either (1) issue a competitive solicitation to solicit EEU provider(s) or (2) issue Orders of Appointment to the incumbent providers.

The Group A recommendations, which are described in findings 1 - 4, above, appropriately reflect the fact that an appropriate start date for an Order of Appointment could differ, depending upon the outcome of the Initial OPAs that are now underway. Consistent with the November 24 Order, if a competitive solicitation is conducted, it is reasonable to plan for an initial Order of Appointment to start in January 2012, at the end of the current contract. If, however, the Board determines in the Initial OPAs that a competitive solicitation is not warranted, a transition to a new structure could occur earlier than that date.

Group A considered both the benefits and complexities associated with transitioning to a new structure in the middle of a contract cycle. It identifies the following benefits of an early transition — allowing the incumbent EEUs to: (1) participate fully in a DRP proceeding, thereby facilitating a smooth transition from the contract model to an Order of Appointment model; and (2) begin the process of incorporating any new work scope specified within their Orders of Appointment into their service offerings, subject to available resources. An early transition would also enable the challenges of the current EEU structure identified by the Board in the

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8. Order of 11/24/09 at 37.

9. Order of 11/24/09 at 45.

November 24 Order<sup>10</sup> to be addressed sooner. However, there are complexities associated with transitioning to a new structure in the middle of a contract period, including issues associated with the existing performance goals and incentive mechanism as well as concerns related to synchronizing the appointment period with the three-year cycles of performance reviews that will continue under the new structure. I am persuaded that the Transition Period described above provides a reasonable framework for addressing these challenges and, therefore, the benefits of an early transition outweigh the challenges associated with such a transition.

As proposed by Group A, if a competitive solicitation is not conducted, the timing of the first OPA under the Orders of Appointment, and the timing of the first Board decision regarding whether to issue a new appointment or begin a solicitation process would differ from that which the Board approved in the November 24 Order.<sup>11</sup> If the schedule approved in the November 24 Order were followed, the first OPAs would occur in the second half of year 7 of the first Order of Appointments, which would be in the middle of a three-year performance period. As Group A observed, this would be inopportune since budgets and performance metrics are expected to be developed on three-year cycles. As a result, Group A recommended that the first OPA under the Orders of Appointment occur in 2015 in order to be consistent with the Board's determination that an OPA should occur at least every six years.<sup>12</sup> For these reasons, I conclude that Group A's proposed changes to the schedule for the initial OPAs under the Orders of Appointment are reasonable.

Therefore, I recommend that the Board adopt Group A's recommendations regarding issues associated with the possible start date for an Order of Appointment, with one exception. Group A recommended that during the Transition Period, "current 2009-2011 budgets, goals and performance indicators should remain as they are currently established."<sup>13</sup> However, as a result of my involvement in contract negotiations with VEIC, I am aware that there are discussions now ongoing between the Board and VEIC regarding changes to budgets, goals and performance indicators for the 2009-2011 period. Specifically, new legislation passed in 2009 changed the

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10. See, Order of 11/24/09 at 15-17 (findings 8-15).

11. Exh. Joint-1 at 3.

12. Exh. Joint-1 at 3.

13. Exh. Joint-1 at 2.



funding available for EEU's to deliver energy efficiency services.<sup>14</sup> To reflect these funding changes, the Board, VEIC, and the DPS are discussing a contract amendment that would include changes to both electric and heating and process-fuel efficiency budgets, the scope of work, a new performance indicator related to heating and process-fuel efficiency services, and a recalculation of some of the electric efficiency goals. In addition, the current contract sets out a process for recalculating the goal for the Total Resource Benefits performance indicator whenever the Board changes the avoided costs used in cost-effectiveness screening by the EEU's. The Board approved new avoided costs for use starting January 1, 2010. The recalculation process can not be completed until after savings verification is completed for 2009; this is not expected to occur until later this year.

Therefore, I recommend that the Board determine that during the Transition Period, budgets, goals and performance indicators should remain what they are at the commencement of the Transition Period, unless there is a change to those goals and performance indicators that is pending at that time (for example, if the recalculation of the Total Resource Benefits goal is not yet complete). If there is a pending change, that change should be allowed to be completed during the Transition Period.

Group A also recommended that an initial DRP proceeding be commenced after the Orders of Appointment are made, with the objective of completing it by May 2011. The Board has previously determined that it will initiate a DRP proceeding in August 2010, with the goal of completing it by May 2011.<sup>15</sup> These two timelines may be consistent, since the current schedule calls for a Proposal for Decision regarding the Initial OPA processes to be issued in late July, which could provide sufficient time for the Board to issue its determination in August. If, however, the schedule for the Initial OPA processes slips, it may not be possible for the Board to issue its determination in the Initial OPA processes in August. In that case, I recommend that the Board wait to initiate the DRP proceeding, consistent with Group A's recommendation.

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14. The legislation increased the funding for heating-and-process-fuel efficiency services, while also requiring the Board to establish a Self-Managed Energy Efficiency Program which has had the effect of reducing the funding for the EEU's electric efficiency services.

15. Memorandum from Susan M. Hudson, Clerk of the Board, to Parties to PSB Docket No. 7466 and the EEU E-mail Service List dated January 15, 2010.

## **2. Advance Notice of Revocation of EEU's Appointment**

In the November 24 Order, the Board noted that all three draft recommendations for the EEU structure in evidence in this proceeding ("Draft Recommendations") state that the Board should provide a to-be-determined period of advance notice in the event it revokes an appointment for good cause. The Board instructed me to consider whether such a period of advance notice is in the public interest, and if so, what that period of time should be.<sup>16</sup>

### **Findings**

5. The Board should not stipulate advance notice for revocation of an EEU's appointment due to a material breach of the terms of its appointment or because of bankruptcy. Instead, the Board should maintain flexibility to act in accordance with the best interest of Vermont ratepayers to address these issues if they arise. Any Board process that could lead to a revocation of an Order of Appointment should allow interested persons to comment. Exh. Joint-1 at 3.

### **Discussion**

Group A's recommendation regarding this issue is reasonable. The Board will be faced with a very serious situation if an EEU materially breaches the terms of its appointment, or is in bankruptcy. It is appropriate for the Board to retain maximum flexibility to act in the best interest of Vermonters, should such a situation occur. Therefore, I recommend that the Board determine that it is not appropriate to include in an Order of Appointment a requirement for advance notice of revocation of an EEU's appointment due to a material breach of the terms of its appointment or because of bankruptcy.

## **3. Statewide DRP or Separate DRP for Each EEU**

The DRP is described in the November 24 Order as "a set of year-by-year values for the EEU's demand-side electricity resource acquisition savings goals and the associated budgets by

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16. Order of 11/24/09 at 49.

calendar year for the twenty-year period following Board adoption of the DRP."<sup>17</sup> However, the November 24 Order noted that it was unclear whether a DRP should be state-wide, or EEU-specific, and directed that this issue be clarified.<sup>18</sup>

### Findings

6. One statewide DRP should be developed and adopted by the Board. If there are multiple EEUs, the statewide plan should identify separate budgets for each EEU. Exh. Joint-1 at 3.

### Discussion

Under the current structure, the Board has determined budgets for the EEU program as a whole on a statewide basis. As part of that determination, the Board has specified what portion of that overall budget will be allocated to BED. The portion of the budget allocated to VEIC was essentially a residual amount (the statewide total less BED's budget and the budgets for certain other program functions such as evaluation activities and contract administrator and fiscal agent costs). Developing one statewide DRP would enable the Board to continue to determine the budget for the EEU program as a whole, which would be more efficient than conducting multiple budget-setting processes. More broadly, there is value in developing a statewide plan for energy efficiency activities. Therefore, I recommend that the Board determine that there will be one statewide DRP.

### **4. Threshold Amount of Additional Funding – Review of EEC Collections**

The EEUs' electric efficiency programs are funded through a separately stated EEC on electric ratepayers' bills. Since the EEU program's inception, EEUs have been encouraged to seek alternative funding sources (such as grant and Federal funds) to increase the amount of efficiency investment they can stimulate. Under the current EEU structure, an EEU is allowed to obtain small amounts of additional funding without changes to the amount collected via the EEC,

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17. Order of 11/24/09 at 65 (finding 107).

18. Order of 11/24/09 at 66. The November 24 Order also stated that stakeholders' input on the DRP concept and details should be solicited in order to ensure that the DRP adequately addresses the needs of stakeholders. This issue was assigned to Group B and is discussed in Section III.B.5, below.

since reducing the EEC collected to reflect any amount of additional funding obtained would discourage an EEU from obtaining such funding. However, the November 24 Order determined that, above a certain percentage threshold of an EEU's annual budget, additional funding acquired by an EEU should be reviewed by the Board, on a case-by-case basis, to determine whether the EEC collection should be adjusted. In that Order, the Board found that there was insufficient evidence regarding what percent of an EEU's annual budget should trigger this review. Therefore, the Board directed that further proceedings be conducted so that an appropriate percentage threshold could be determined.<sup>19</sup>

### Findings

7. An EEU should inform the Board and the DPS of any "unanticipated additional funding" that it secures to perform activities within the scope of its Order of Appointment. In this context, "unanticipated additional funding" is defined as any funding secured by an EEU through means other than carrying out operational responsibilities of the Order of Appointment. Exh. Joint-1 at 3.

8. If any individual funding source provides funds for activities already supported by the EEC, an EEU should report to the Board whether these funds are greater than 5 percent of that EEU's annual EEC-funded budget (defined as an EEU's budget as set by the most recent Board Order plus any authorized carryover). Exh. Joint-1 at 3.

9. If the additional funds are greater than 5 percent of an EEU's annual EEC-funded budget, the Board should examine whether EEC collections should be adjusted. If the funds are less than 5 percent of an EEU's annual EEC-funded budget, the Board would not be required to examine whether EEC collections should be adjusted. Exh. Joint-1 at 3-4.

10. This general principle should not prohibit any party from requesting that the Board examine whether EEC funds should be adjusted. Exh. Joint-1 at 4.

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19. Order of 11/24/09 at 77.

### Discussion

Group A has recommended a reasonable threshold amount of additional funding above which the Board should review, on a case-by-case basis, whether the EEC collection should be adjusted. Five percent allows an EEU to continue to obtain small amounts of additional funding for electric efficiency activities without changes to the EEC collection, and appropriately reflects the fact that it may be appropriate to adjust the EEC collection as a result of large amounts of additional funding. Therefore, I recommend that the Board determine that if an EEU obtains additional funds greater than five percent of its annual EEC-funded budget, the Board should review, on a case-by-case basis, whether the EEC collection should be adjusted. In addition, I recommend that the Board expressly state that, if an EEU obtains additional funds below this threshold, any party should be able to request that the Board consider whether the EEC collection should be adjusted.

### **5. Threshold Amount of Additional Funding – Review of Goals, Performance Indicators, or Service Offerings**

Additional funding may also require the Board to review an EEU's goals and performance indicators. In the November 24, 2009, Order, the Board determined that, where the amount of additional funding is a small percentage of the EEU budget, no changes should be made to an EEU's goals or performance indicators because, in that instance, it is not in the ratepayers' interest to have a potentially expensive and protracted process for deciding whether any changes are appropriate. However, if an EEU were to acquire a significant amount of additional funding relative to the size of its budget, the Board determined that it should consider scaling performance indicators, developing new indicators, or making programmatic changes. There was insufficient evidence at that time to determine what percentage of an EEU's annual budget should trigger this review. Therefore, the Board directed that further proceedings be conducted so that an appropriate percentage threshold could be determined.<sup>20</sup>

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20. Order of 11/24/09 at 77-78.

### Findings

11. When an EEU informs the Board and the DPS of any unanticipated additional funding that it secures to perform activities within the scope of its Order of Appointment, it should specify if any individual source provides funds greater than 5 percent of either the resource-acquisition or non-resource-acquisition budget (depending upon the scope of activities to be funded). Exh. Joint-1 at 4.

12. If any individual source of additional funds is less than 5 percent of the relevant budget, the Board should not be required to examine whether goals should be adjusted.<sup>21</sup> However, if any individual source of additional funds for resource-acquisition activities is less than 5 percent of the EEU's resource-acquisition budget, performance goals should be adjusted on a formulaic basis, as is done under the Board's current contract with VEIC, and as would be determined when future performance indicators are developed. Exh. Joint-1 at 4.

13. If any individual source of additional funds is greater than 5 percent of the resource-acquisition or non-resource-acquisition budget (depending upon the scope of activities to be funded), the Board should examine whether performance goals should be adjusted. Exh. Joint-1 at 4.

14. These general principles should not prohibit any party from requesting that the Board examine whether performance goals (or EEC funds) should be adjusted. Exh. Joint-1 at 4.

### Discussion

I conclude that Group A has recommended a reasonable threshold amount of additional funding above which the Board should review, on a case-by-case basis, whether an EEU's performance indicator and goals should be adjusted. The Board's current contract with VEIC allows for formulaic adjustments to be made to resource-acquisition performance goals as a result of small changes in available funding. Similarly, under the current contract model, when

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21. Exh. Joint-1 is slightly unclear regarding Group A's recommendation in this area. While the document states that Group A's recommendation relates to adjusting performance goals, developing new performance indicators, and making programmatic changes, the specific recommendation language refers only to Board review of performance goals. I believe Group A intended its recommendation to refer to all aspects that the Board could review, and have written this Proposal for Decision accordingly. If I have interpreted Group A's recommendation incorrectly, parties should indicate what the Group intended to recommend in their comments on this Proposal for Decision.

the amount of available funding has increased significantly during a contract term (for example, after the Legislature removed the statutory cap on annual EEC collections and required the Board to review the EEU's budget in light of new statutory criteria) the Board has reviewed an EEU's performance goals, performance indicators, and services offered. These practices have worked well, and Group A's recommendation would continue them. Therefore, I recommend that the Board determine that:

- (1) if an EEU obtains additional funds greater than five percent of its annual resource-acquisition or non-resource-acquisition budget (depending upon the scope of activities to be funded), the Board should review, on a case-by-case basis, whether the EEU's performance goals, performance indicators, or service offerings should be adjusted;
- (2) if an EEU obtains additional funds below this threshold, any party should be able to request that the Board review whether the EEU's performance goals, performance indicators, or service offerings should be adjusted; and
- (3) if an EEU obtains additional resource-acquisition funds less than five percent of its annual resource-acquisition budget, the EEU's performance goals should be adjusted on a formulaic basis, as done under the current contract and as would be determined when future performance indicators are developed.

#### **6. Assignment of Contract Administrator's Functions**

In the current EEU structure, the Contract Administrator serves under contract to the Board and performs a variety of functions, including: tracking compliance of Efficiency Vermont with the terms of the EEU contract; reviewing invoices to be paid by the Fiscal Agent; and mediating any disputes that arise related to the EEU. In the November 24 Order, the Board determined that many valuable functions currently carried out by the Contract Administrator will still need to be performed in an Order of Appointment model, but these could be divided among the EEU, the DPS, and the Board, and there would no longer be a need for a Contract Administrator. The Board directed that further proceedings be held to determine precisely which functions currently performed by the Contract Administrator must continue, and which entity should be responsible for these functions. The Board determined that the Contract

Administrator's current mediation responsibilities should not be included in the potential functions to be assigned to other entities.<sup>22</sup>

### Findings

15. The Contract Administrator's current responsibilities can be divided into the following categories: administrative, financial, mediation, measurement and verification, and performance indicators/minimum performance standards. Exh. Joint-2, generally.

16. All of the Contract Administrator's mediation responsibilities, and some of the Contract Administrator's responsibilities in each of the other categories will no longer need to be performed under the Order of Appointment model. Exh. Joint-2, generally.

17. The Contract Administrator's remaining responsibilities should be reassigned to either an EEU, the DPS, or the Board. In some instances, the EEU may take responsibility for the function, but it should inform the Board and the DPS. Exh. Joint-2, generally.

### Discussion

Group A has recommended which of the Contract Administrator's current responsibilities should still be performed under the Order of Appointment model, and which entity should perform each responsibility. I conclude that Group A has appropriately identified the Contract Administrator's current responsibilities, and that its recommendations for reassignment of those responsibilities are reasonable, except with respect to four items: (1) Review and approve substantive changes to IT system; (2) Review and approve Program Implementation Procedures (PIPs), after resolving any disputes regarding the Procedures;<sup>23</sup> (3) Review and approve changes in EEU's Confidential Management Information System; and (4) Review and approve changes to EEU's Service Quality and Reliability Plan ("SQRP").<sup>24</sup>

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22. Order of 11/24/09 at 81-82.

23. PIPs are reports produced by the EEU that detail new practices or substantive changes in the implementation of energy efficiency services and initiatives.

24. My recommendations regarding the reassignment of the Contract Administrator's responsibilities are shown in detail in Appendix A to this Order, which is a modified version of exh. Joint-2.



Group A recommended that the first three of these items be assigned to an EEU, with the understanding that the EEU would inform the DPS and the Board. In these three instances, although it may be desirable for an EEU to inform the DPS, I do not believe the EEU should be required to also inform the Board. While the Contract Administrator has reviewed and approved changes to each of these items under the current model, the Board itself has not been involved in the approval of such changes. In the November 24 Order, the Board found that an Order of Appointment structure would create a relationship between the Board and an EEU that would be consistent with the regulatory relationship that exists between the Board and electric utilities.<sup>25</sup> The Board does not require electric utilities to inform the Board of changes to their information technology or confidential information management systems. While electric utilities do not have PIPs, these typically address an EEU's operations at a level of detail such that the Board would not be involved if the entity at issue were an electric utility. However, as discussed further in Section III.B.4, below, it is possible that a future PIP could provide guidance to an EEU regarding the proper allocation of certain costs between funds designated for electric efficiency or heating-and-process-fuel efficiency. Because of the Board's statutory responsibilities with respect to the management of these funds, it is appropriate for the Board to be involved in such cost allocation issues. Therefore, I recommend the Board determine that an EEU need not inform the Board of changes to its information technology and confidential information management systems, and changes to PIPs that address issues other than cost allocation between electric efficiency and heating-and-process-fuel efficiency funds.

The fourth item concerns review and approval of changes to an EEU's SQRP, which Group A has recommended replace the Quality Assurance Quarterly Reports that are provided to the DPS and the Contract Administrator under Efficiency Vermont's current contract. The Board has approved an SQRP for all Vermont electric distribution utilities. These SQRPs include performance standards in seven broad areas of service that have a substantial impact on consumers: customer service phone answering; billing; meter reading; work completion;

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25. Order of 11/24/09 at 19 (finding 22).

customer satisfaction; worker safety; and reliability of service.<sup>26</sup> The SQRPs also include mechanisms for compensating customers if an electric utility does not meet the standards. With the transition to an Order of Appointment structure, the Board's oversight of an EEU will be more similar to its oversight of electric utilities. This should extend to oversight of service quality issues as well. Therefore, it is appropriate to replace the Quality Assurance Quarterly Reports currently provided by Efficiency Vermont with a SQRP. In making this recommendation, I recognize that there will be some differences in the broad areas of service that have a substantial impact on consumers (for example, an EEU does not bill its customers or read their meters). As a result, I expect the contents of an EEU's SQRP will be set on an EEU-specific basis, just as the performance standards and minimum performance levels included in electric utilities' SQRPs are set on a utility-specific basis, depending on the particular utility's circumstances.

Group A recommended that the responsibility for reviewing and approving changes to an EEU's SQRP be assigned to the DPS, and noted that the assignment was consistent with the review and approval process for changes to an electric utility's SQRP. In practice, however, changes to an electric utility's SQRP are reviewed by both the Board and the DPS, with the DPS recommending a course of action to the Board, and the Board determining whether or not to approve the change. I agree with Group A's recommendation that the review and approval process for changes to an EEU's SQRP should be the same as the process for changes to an electric utility's SQRP. Therefore, I recommend that the Board determine that both the DPS and the Board should have responsibility for reviewing such changes, and the Board should be responsible for approving such changes.

One reassignment deserves further discussion. Group A has recommended that the Board review and approve an EEU's monthly invoices.<sup>27</sup> This appropriately recognizes that the Board

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26. While many of the electric utility SQRPs are quite similar, the 20 Plans are not identical. They include different standards and different minimum performance levels for those standards, depending on the particular utility's circumstances.

27. Payment for costs incurred to provide service is one area in which an EEU will continue to be different from an electric utility. For example, by statute, EEC collections and other funds to be used by the EEU are deposited into the EEU Fund, and the Board is charged with overseeing this fund. *See, e.g.,* 30 V.S.A. § 209(d)(3). There must be  
(continued...)

has the ultimate authority over expenditures from the EEU Fund, and I recommend that the Board determine that it should approve an EEU's invoices. However, the process regarding how such invoice approval would be performed needs further definition. For example, should the DPS make a recommendation to the Board regarding invoice approval prior to the Board taking action on an invoice? If an electric utility were asking for guaranteed cost recovery of a particular expense, the Board would ask the DPS for its recommendation prior to ruling on the request. While invoice approval for an EEU is not the same as cost recovery for an electric utility, similar principles are involved; namely, ratepayer funds are being committed. Therefore, I recommend that the Board direct appropriate Board staff to engage in administrative discussions outside of this Docket with the DPS, the EEU Fund Fiscal Agent, the Contract Administrator and the current EEUs (because of their experience with the invoice-approval process) to address in more detail the process for invoice approval.<sup>28</sup>

#### B. Group B Issues

Group B, which consisted of the DPS, VEIC, BED, Contract Administrator, CVPS and Green Mountain Power Corporation ("GMP"), was assigned the following issues:

1. an EEU's role with respect to geographically targeted programs;
2. the guidelines attached to the 2009 Draft Recommendation regarding the EEU's role in combined-heat-and-power ("CHP") projects, including consideration of the appropriateness of the risk adjustment contained therein;
3. the development of proposed guidelines for an EEU's responsibilities regarding demand response;

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27. (...continued)

some mechanism by which the Fiscal Agent for the EEU Fund is authorized to release monies from the EEU Fund to an EEU; historically, this has been through monthly invoices by an EEU that are reviewed and approved for payment by the Contract Administrator. An electric utility, on the other hand, collects funds directly from its ratepayers, and spends them without such review and approval.

28. Parties should note that, if the Board were to accept this recommendation, these administrative discussions would not be treated as part of this contested case, and other parties would not have an opportunity to comment on the outcome of those discussions. Any objections to this recommendation should be filed in parties' comments on this Proposal for Decision.

4. consideration of whether an EEU should consider both electro- and non-electro-technologies when assessing the cost-effectiveness of consumer end uses; and
5. the concept and details of the DRP.

Group B filed consensus recommendations on all the above issues, except with respect to the risk adjustment to be used by an EEU when it screens CHP projects, as explained further below. The DPS filed a letter stating that it had no additional comments on these recommendations. CVPS filed comments supporting the Group B recommendations. No other party filed comments or reply comments on the Group B recommendations. I will discuss each of the issues addressed by Group B in turn.

### **1. EEU's Role With Respect to Geographically Targeted Programs**

Starting in 2006, the Board has directed Efficiency Vermont to spend a portion of each year's budget on targeted energy efficiency services in specific geographic areas to help reduce the need to upgrade transmission and distribution infrastructure. These services are referred to as geographically targeted programs.

In Phase 1 of this proceeding, CVPS recommended that the activities of an EEU should be in place of utility-specific programs developed pursuant to 30 V.S.A. § 218c(a)(2) and (b). CVPS argued that it would be appropriate to assign full responsibility to an EEU to plan for and deliver all demand-side resource acquisition activities. CVPS asserted that electric distribution utilities should not be responsible for conservation and efficiency program planning because it duplicates functions provided by the EEU.<sup>29</sup>

In the November 24 Order, the Board stated that it would be premature for it to remove all responsibilities of the distribution utilities to offer demand-side management programs to customers in their service territories on the basis that an appointed EEU should implement these programs. The Board noted that geographically targeted programs are a relatively new initiative, and the processes and impacts of these programs have not yet been evaluated. Nevertheless, the Board determined that an Order of Appointment should clarify an EEU's role with respect to

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29. Order of 11/24/09 at 59-60, citing CVPS Initial Brief at 6 and Bentley pf. sur. at 5.

geographically targeted programs. The Board directed the DPS to file the results of its evaluation of Efficiency Vermont's geographically targeted programs in this Docket so that all parties could discuss them and explore the roles of an EEU and the distribution utilities in geographically targeted areas.<sup>30</sup>

### Findings

18. An EEU's Order of Appointment scope of activities may include planning for and implementing geographically targeted efficiency services to solve distributed utility "supply problems" (as that phrase is used in the Distributed Utility Planning Guidelines approved in Docket 6290) and transmission "reliability deficiencies" (as defined in the Memorandum of Understanding approved in Docket 7081), as directed by the Board in the adoption of the DRP. Exh. Joint-3 at 1.

19. The DRP should identify and determine any areas to be geographically targeted by an EEU and any appropriate area-specific EEC adders (as described in Docket 7081) that the Board finds appropriate. Exh. Joint-3 at 1.

20. To the extent that the Board authorizes an EEU to plan for and implement geographically targeted programs in a DRP, such activities should satisfy the obligations of an electric utility to plan for and deliver such programs to meet the same supply problem or reliability deficiency under 30 V.S.A. § 218c. However, distribution utilities must continue to test the reasonableness of EEU estimates of efficiency resources available, projections of costs, and other recommendations, and maintain the responsibility to select the mix of resources to be deployed to serve load and resolve supply problems and reliability deficiencies. Exh. Joint-3 at 2.

### Discussion

There is a timing problem related to the resolution of this issue. The November 24 Order clearly contemplated that the DPS would have completed its evaluation of Efficiency Vermont's geographic targeting activities in time to allow the parties to consider the results in this

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30. Order of 11/24/09 at 60.

proceeding. This has not occurred. However, the Board also directed that an Order of Appointment clarify the EEU's role with respect to geographically targeted programs. Group B has made a recommendation regarding this issue, and no party has objected to it, despite the fact that the evaluation activities are not complete. In light of this, combined with the likelihood that the evaluation results will address whether geographically targeted programs should continue rather than address the division of responsibilities between an EEU and an electric distribution utility, I conclude that it is appropriate for the Board to resolve the issue raised by CVPS now.

Group B's recommendation, if adopted by the Board, would alter the responsibilities of an EEU and an electric distribution utility, but not as broadly as CVPS had originally urged. CVPS had asserted that it would be appropriate to assign an EEU full responsibility for planning for and delivering all demand-side resource acquisition activities. Group B's recommendation (which CVPS supports) provides that if a DRP authorizes an EEU to plan for and implement geographically targeted programs to address a particular supply problem or reliability deficiency, that EEU's activities should satisfy an electric utility's obligations to plan for and deliver such programs to meet the same supply problem or reliability deficiency. This is materially narrower than CVPS's original recommendation; under Group B's recommendation, electric utilities will still retain responsibility for planning for and delivering energy efficiency services as part of distributed utility planning, if the constrained area is not included in an EEU's DRP. In addition, electric utilities will retain the responsibility for selecting the mix of resources, of which energy efficiency may be one, to be deployed to serve load and address supply problems and reliability deficiencies.<sup>31</sup>

Furthermore, Group B's recommendation does not alter an electric utility's responsibility to fund energy efficiency investments in a constrained area if the statewide EEU budget is not sufficient to acquire the desired energy efficiency resources in that constrained area. Consistent with Paragraph 66 of the Memorandum of Understanding approved by the Board in its June 20, 2007, Order in Docket 7081 (the Board's investigation into least-cost integrated resource

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31. Part of an electric utility's responsibilities with respect to selecting energy efficiency to be part of the mix of resources to address a particular supply problem or reliability deficiency is the identification of how much energy efficiency is needed in what area within what time frame.

planning for Vermont Electric Power Company, Inc.'s transmission system), an electric utility may petition the Board to fund such services via a service-territory-specific EEC adder. Group B's recommendation provides that any such EEC adders should be identified and approved in the context of the DRP process. Thus, under Group B's recommendation, an electric utility remains responsible for: (1) participating in the DRP process to identify potential areas to be geographically targeted; (2) coordinating with an EEU regarding the anticipated energy efficiency savings in those areas; and (3) making appropriate funding decisions (including the possibility of petitioning the Board for a service-territory-specific EEC adder), if the statewide budget established by the Board in the DRP process will not be sufficient to acquire the necessary energy efficiency savings in the geographically targeted areas.

I conclude that the division of responsibilities recommended by Group B is reasonable at the present time. The recommendation emphasizes that an EEU and a distribution utility will need to coordinate, not duplicate, their planning activities, particularly in areas with supply problems and reliability deficiencies. The recommendation also does not alter a distribution utility's responsibilities to fund additional energy efficiency investments in geographically targeted areas, should the statewide budgets be insufficient to acquire the desired energy efficiency savings. Therefore, I recommend that the Board adopt Group B's recommendation regarding an EEU's role with respect to geographically targeted programs, with the caveat expressed in the following paragraph.

Geographic targeting services are still relatively new. It is possible that the DPS's evaluation of Efficiency Vermont's geographic targeting activities could indicate that such activities did not provide the anticipated benefits and should not be continued. If such a situation were to arise, the Board could address the issue by modifying an Order of Appointment, after notice and opportunity for hearing, or take other appropriate action to direct an EEU to stop providing geographic targeting services. Therefore, I recommend the Board clarify that, if an EEU were no longer to provide geographic targeting services, an electric utility would once again be responsible for planning and delivering energy efficiency services as part of distributed utility planning, even if the constrained area was originally included in an EEU's DRP.

## **2. EEU's Role in CHP Projects**

The November 24 Order determined that an Order of Appointment should permit an EEU to expand its role in CHP projects around the state subject to guidelines that would be modeled after those in the Draft Recommendations. However, the Board found that the guidelines needed to be refined, including in two specific areas. First, the November 24 Order stated that there was a need to identify limits on the incentive amount that an EEU could offer for a single project and on the cumulative value of incentives for a year. The second issue mentioned by the Board was originally raised by GMP, who had argued that it may not be appropriate to include the 10% risk adjustment in the cost-effectiveness screening of CHP projects<sup>32</sup> because "the relative uncertainty of fuel expenses, and the technical complexity associated with implementing CHP, tend to offset the qualities that the risk adjustment is designed to reflect."<sup>33</sup> The Board directed that GMP's concerns regarding the appropriateness of a risk adjustment in cost-effectiveness screening of CHP projects be addressed in Phase 2 of this proceeding.

### **Findings**

21. The guidelines provided as an attachment to the Draft Recommendations should be adopted as guidelines for an EEU that may provide CHP services, with some non-substantive edits (such as modifying references to Efficiency Vermont to encompass any EEU) and the substantive modifications described in findings 22 and 23, below. Exh. Joint-3 at 2.

22. An EEU should provide notice and opportunity for comment to the DPS and the host distribution utility before providing an incentive in excess of \$100,000 to any one CHP project or cumulative incentives for CHP projects during a calendar year of over \$500,000. Exh. Joint-3 at 2.

23. At this time, an EEU should not use a risk adjustment when it performs cost-effectiveness screening of CHP projects. However, the appropriateness of a risk adjustment should be further considered in future proceedings such as those that might address externalities and risk for all demand-side resources. Exh. Joint-3 at 2.

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32. Such an adjustment would increase a project's calculated benefits.

33. Order of 11/24/09 at 62, citing Martin pf. at 8.



### Discussion

The November 24 Order identified two specific issues related to the EEU's role in CHP projects that were to be addressed in Phase 2 of this proceeding. Group B was only able to reach a consensus regarding one of those issues — the thresholds above which an EEU must provide notice and comment before providing incentives. CHP projects can be quite costly, particularly when compared with other types of energy efficiency investments. It is also unknown how many CHP projects might be pursued if incentives from an EEU were available. As a result, there is a concern that incentives for CHP projects could consume a significant portion of an EEU's budget, at the expense of other types of energy efficiency investments. Incentive thresholds can help ensure that this situation does not occur. I recommend that the Board determine that the \$100,000-per-project and \$500,000-per-year thresholds are appropriate at the present time. These thresholds appear to appropriately balance the possible benefits of providing material incentives for some cost-effective CHP projects each year with concerns that the demand for such incentives could adversely affect an EEU's ability to deliver its traditional energy efficiency services.

However, the expansion of an EEU's role related to CHP projects is a new development that will begin with the first Order(s) of Appointment (including during the Transition Period, if there is one). Therefore, it will be important for the DPS's program evaluation to address this expanded role, including the incentive thresholds that I recommend the Board adopt. It is possible that such an evaluation could indicate that changes to the CHP guidelines or to the EEU's role in CHP projects would be appropriate. In that event, the Board could address the issue in the DRP process, or by modifying the CHP guidelines, or by modifying an Order of Appointment, after notice and opportunity for hearing.

I also recommend that the Board modify Group B's recommended list of entities that an EEU must provide notice and opportunity for comment when it is considering offering an incentive that exceeds either threshold (or when an EEU is considering pursuing a project that includes customer-sited generation). The CHP guidelines filed by Group B (and which I have admitted into evidence as exh. Joint-4) provide that an EEU should provide notice and

opportunity for comment in both those instances to the DPS, the host distribution utility, and the Contract Administrator. Since the Board determined in the November 24 Order that there will not be a need for a Contract Administrator in the Order of Appointment structure,<sup>34</sup> I recommend that the Board remove the Contract Administrator from the list of entities that an EEU must provide notice and opportunity for comment in both those instances.

Group B was not able to reach a consensus regarding the appropriateness of using a 10% risk adjustment when screening CHP projects for cost-effectiveness. Nevertheless, Group B recommended that, at the present time, a risk adjustment not be included in the CHP guidelines, but that the issue be revisited in future proceedings such as those that might address externalities and risk for all demand-side resources. This is a reasonable approach, and I recommend the Board adopt it. Given the uncertainty regarding the appropriateness of a risk adjustment for CHP projects that would increase a project's calculated benefits, not including such a risk adjustment at this time ensures that only cost-effective CHP projects receive incentives from an EEU.<sup>35</sup> At the same time, determining that this decision should be revisited in appropriate future proceedings provides an opportunity to explore this issue further, perhaps after an EEU has some experience with potential CHP projects.

My recommendations regarding appropriate guidelines for the role of an EEU in CHP projects are shown in detail in Appendix B to this Order, which is a modified version of exh. Joint-4.

One paragraph of the guidelines deserves further discussion – Paragraph 7, which states that there may be certain additional circumstances where an EEU project that includes customer-sited generation should be pursued on a case-by-case basis. The guidelines provide that before proceeding with such projects, an EEU should provide notice and opportunity for comment to the DPS and the host distribution utility. If such a situation arises, it may also be appropriate to address whether an EEU should use electric efficiency funds or monies earmarked for heating-

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34. Order of 11/24/09 at 81.

35. Since including a risk adjustment increases a project's calculated benefits, not including such an adjustment is a more conservative approach to analyzing the project's cost-effectiveness. It requires a project to have more quantifiable benefits to pass the cost-effectiveness screening test than would be necessary if a risk adjustment were used.

and-process-fuel efficiency to fund such projects, depending upon the nature of the project. As discussed further in Section III.B.4, below, this appears to be the type of issue that is well-suited to being addressed through traditional mechanisms such as PIPs or the Technical Advisory Group.<sup>36</sup> As discussed in Section III.A.6, above, the Board should be informed of proposed changes to PIPs that address cost-allocation issues between electric and heating-and-process-fuel efficiency funds.

### **3. EEU's Responsibilities Regarding Demand-Response Services**

The November 24 Order provided that an EEU should be authorized, as part of providing comprehensive services to customers, to include demand response as an eligible demand-side resource option, subject to guidelines that specify eligible demand-response applications and economic-screening procedures. In that Order, the Board determined that the guidelines should clarify that an EEU would provide demand-response implementation services only on the customer side of the meter and would refer a customer to potential demand-response providers, including, but not limited to, the host distribution utility. The Board directed that these guidelines be finalized prior to the issuance of an Order of Appointment.<sup>37</sup>

#### **Findings**

24. During the transition period (through December 31, 2011), an EEU's activities with respect to demand response should be conducted in accordance with the guidelines contained in Appendix C to this Order. These guidelines clarify the types of demand-response activities an EEU may engage in, and the types of relationships an EEU may form with demand-response providers. Exh. Joint-5 at 1.

25. As provided in the demand-response guidelines, during the transition period, refinements of the demand-response guidelines should be considered jointly by the distribution utilities, the DPS, and the EEU(s). Any refinements should be designed to work in concert with

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36. The Technical Advisory Group includes members of the EEU and the DPS and focuses on reviewing and approving the methodology and associated assumptions underlying measure-savings calculations.

37. Order of 11/24/09 at 62-63.

the host distribution utility's demand-response strategy and initiatives (including any rate designs). Any proposed changes should be filed with the Board for approval. Exh. Joint-5 at 2.

26. The guidelines contained in Appendix C should not apply when an EEU and the distribution utility are the same entity. Exh. Joint-5 at 2.

### Discussion

Group B developed both short-term and long-term guidelines detailing an EEU's responsibilities regarding demand response, and recommended that the Board adopt them. As directed by the Board, the short-term guidelines provide that an EEU could include demand response as an eligible demand-side resource option (in other words, only on the customer side of the meter) and that an EEU would refer a customer to potential demand-response providers, including, but not limited to, the host distribution utility. The short-term guidelines, which are intended to apply during the Transition Period, also address: cooperative agreements between an EEU and demand-response providers; the assignment of capacity credits in the ISO-NE Peak Demand Response Program and energy and capacity savings when an EEU collaborates with a demand-response provider; and the provision of technical and financial assistance by an EEU for measures that have both demand-response and energy-savings capabilities. The long-term guidelines characterize the guidelines as a whole as "interim" guidelines, and address the process for refining them during the Transition Period. I am persuaded that both the short-term and the long-term guidelines recommended by Group B and attached to this Order as Appendix C are reasonable and recommend that the Board adopt them.<sup>38</sup>

### **4. EEU's Consideration of Electro-Technologies**

In Phase 1 of this proceeding, CVPS recommended that an EEU be expressly authorized to consider both electro- and non-electro-technologies when assessing the cost-effectiveness of

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38. Appendix C is substantively identical to Group B's recommended guidelines. The only changes I made were to spell out and/or define various abbreviations that were not defined in the recommended guidelines.

consumer end-uses.<sup>39</sup> CVPS asserted that some electro-technologies serve consumer end uses at a societal life-cycle cost that is expected to be less than serving the end use with other technologies. For example, heating and cooling services can be provided with heat pump technology using electricity rather than fuel oil or propane.<sup>40</sup> The Board directed that whether an EEU should consider both electro- and non-electro-technologies when assessing the cost-effectiveness of consumer end uses should be examined further in Phase 2 of this proceeding, and clarified in an Order of Appointment.<sup>41</sup>

### Findings

27. An EEU should be able to consider both electro- and non-electro-technologies when assessing the cost-effectiveness of consumer end uses and potential efficiency measures. Exh. Joint-3 at 2.

28. The potential for both electro- and non-electro-technologies should be considered in the DRP and an EEU's Order of Appointment scope of work. Exh. Joint-3 at 2.

29. Consideration of electro-technologies may require the development of policy guidance on the appropriate usage of different types of efficiency funds. This type of technical and policy guidance should be pursued through traditional mechanisms such as the Technical Advisory Group, PIPs, or other appropriate means. Exh. Joint-3 at 2.

### Discussion

Least-cost integrated resource planning principles require that utilities provide service to Vermont ratepayers, after safety concerns are addressed, at the lowest present-value life-cycle cost, including environmental and economic costs. Allowing an EEU to consider both electro- and non-electro-technologies when assessing the cost-effectiveness of consumer end uses and

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39. The installation of certain electro-technologies can curtail the use of fossil fuels or less efficient electric equipment. In the case of an electro-technology that substitutes the use of fuel for an electro-technology, there may be an increase in electrical use, but the overall societal benefits associated with the use of the electro-technology may be greater than the use of the process or equipment using fossil fuel.

40. Order of 11/24/09 at 64, citing Bentley pf. at 15 and tr. /16/09 at 120 (Bentley).

41. Order of 11/24/09 at 64.

potential efficiency measures is consistent with this principle, and I recommend that the Board allow an EEU to consider electro-technologies.

However, it may be necessary to address whether an EEU should use electric efficiency funds or monies earmarked for heating and process-fuel efficiency to fund projects involving electro-technologies because it may be inappropriate for an EEU to use electric efficiency funds, which were collected from ratepayers for the express purpose of encouraging investments to reduce electricity consumption, to encourage the use of electro-technologies, which will increase electricity consumption. This appears to be the type of issue that is well-suited to being addressed through traditional mechanisms such as PIPs or the Technical Advisory Group.<sup>42</sup> Therefore, I recommend the Board adopt Group B's recommendations regarding an EEU's consideration of both electro- and non-electro-technologies when assessing the cost-effectiveness of consumer end uses and potential efficiency measures.

Nevertheless, consideration of electro-technologies by an EEU is a new development that will begin with the first Order(s) of Appointment (including during the Transition Period, if there is one). Therefore, it will be important for the DPS's program evaluation to address this new practice. It is possible that such an evaluation could indicate that changes to this practice would be appropriate. If such a situation were to arise, the Board could address the issue in the DRP process, or by modifying an Order of Appointment, after notice and opportunity for hearing.

## **5. Concept and Details of the DRP**

The November 24 Order states that the DRP should provide both short-term (e.g., three-year) savings goals and budgets that can serve as the basis for performance indicators to assess an EEU's performance, and operating assumptions for long-term (e.g., 20-year) budgets and savings goals that can be used for long-term electricity resource planning by the EEU, the DPS, distribution utilities, and the Vermont Electric Power Company, Inc. ("VELCO").<sup>43</sup> The November 24 Order further determined that input should be solicited from stakeholders on the

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42. As discussed in Section III.A.6, above, the Board should be informed of proposed changes to PIPs that address cost-allocation issues between electric and heating-and-process-fuel efficiency funds.

43. Order of 11/24/09 at 65 (finding 108).

DRP concept and details in order to ensure that the DRP adequately addresses the needs of stakeholders in this planning activity.<sup>44</sup>

### Findings

30. The concept and details of the DRP should be discussed in the context of the Comprehensive Document that will describe the overall EEU program structure. Exh. Joint-3 at 3.

### Discussion

Because of the type and number of the issues assigned to Phase 2 of this Docket, multiple concurrent and overlapping sets of discussions are occurring among the parties to this Docket. At the beginning of Phase 2, the parties discussed how best to group the numerous issues in order to facilitate their discussion and resolution. It now appears, based on Group B's recommendation regarding this issue, that it would be preferable for the concept and details of the DRP to be addressed in the separate, but related, discussions leading to the development of the Comprehensive Document. Since the Group B members are also involved in the discussions among all Docket 7466 parties regarding the development of the Comprehensive Document, I am persuaded it is appropriate to accept their recommendation. However, I note that, in the context of other issues discussed in this Proposal for Decision, I have recommended that the Board adopt certain recommendations by Groups A and B regarding items that should be included in the DRP.<sup>45</sup> Therefore, I recommend that the Board determine that the concept and remaining details of the DRP (that is, those details not resolved in this Proposal for Decision) should be discussed (and resolved) in the context of the Comprehensive Document.

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44. Order of 11/24/09 at 66.

45. See, Sections III.B.1 and III.B.4, above, and Section III.C.1, below.

### C. Group C Issues

Group C was initially assigned to Board staff because the parties had stated they believed these issues were ripe for Board resolution and that further discussions among the parties were not likely to be productive. The issues assigned to Group C were those associated with making an appropriate level of customer-specific information concerning projects publicly available while protecting competitively sensitive information, including what level of detail is appropriate to make publicly available, and what information regarding this issue should be included in an Order of Appointment.

The DPS and CVPS filed comments regarding the Group C issues; these comments are described below.

#### **1. Making Customer-Specific Information Regarding Projects Publicly Available**

In the November 24 Order, the Board determined that an EEU should make cost and contact information on commercial and industrial projects publicly available except for competitively sensitive information. The Board directed that further proceedings be conducted regarding what level of detail is appropriate to make publicly available and whether any more information regarding this issue should be included in an Order of Appointment.<sup>46</sup>

### Findings

31. Efficiency Vermont includes a "release request" on its standard post-project customer feedback form that is sent to business customers upon project completion. This release request asks the customer to grant Efficiency Vermont permission to use the customer's name and/or project details (including energy efficiency actions, estimated financial savings and costs, financial incentives and energy savings) in Efficiency Vermont publications and promotions. Exh. VEIC-9 at 1; exh. VEIC-11.

32. The annual percentage of business customers who have granted Efficiency Vermont permission to use the customer's name and/or project details in Efficiency Vermont publications

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46. Order of 11/24/09 at 66-67.



and promotions has varied between 15 and 50 percent. In 2009, 37 percent of business customers granted Efficiency Vermont such permission. Exh. VEIC-9 at 1-2.

33. BED provides a monthly report to its Board of Electric Commissioners and the Board regarding BED's energy efficiency activities. Exh. BED-2 at 1.

34. BED's monthly report identifies the names of business customers with whom BED has worked during that month on energy efficiency projects (either exploring possible projects or implementing projects). BED's monthly report includes a general description of the type of project being considered or implemented (for example, lighting retrofit, lighting controls, code compliance, HVAC, cogeneration unit, energy audit, etc.), but does not provide project details. Exh. BED-2 at 2-5.

### Discussion

The Board directed that further proceedings be conducted regarding: (1) what level of detail is appropriate to make publicly available; and (2) whether any more information regarding this issue should be included in an Order of Appointment. I discuss each of these issues in turn.

IBM made specific recommendations regarding what level of detail should be appropriate to make publicly available. It asserted that posting a list of typical energy savings projects on a website, along with a contact person's name and number, would be helpful to others who might be considering similar projects or who are looking for project ideas.<sup>47</sup> IBM recommended that the following information be included in this list: project title; description (including specific measures and number of units installed); cost; energy cost savings; and return on investment.<sup>48</sup>

The DPS filed comments noting that at least 37 percent of business customers in every year since 2005 (and many more in some years) have agreed to share information regarding their projects in Efficiency Vermont publications and promotions. The DPS asserted that information regarding these projects could be made more readily available, for example, through a listing of these projects on a website or the hosting of a forum for businesses specifically to share ideas and

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47. Exh. IBM-1 at 1.

48. Exh. IBM-1 at 2.

projects. The DPS also recommended that stakeholders have further discussions outside this Docket on how to significantly increase the percentage of projects with shared information.<sup>49</sup>

CVPS filed comments stating that it defers to the Board on the scope of public disclosure to be required for projects implemented by an EEU. CVPS noted that the EEU's annual savings reports do provide substantial information on the measures and savings being claimed by the EEU.<sup>50</sup>

As IBM notes, making more project-specific information publicly available could be helpful to others considering projects or looking for project ideas. However, I am concerned about requiring customer-specific information to be made public. Neither the Board nor an EEU is best suited to determine what customer-specific information is competitively sensitive; I recommend the Board conclude that that responsibility should remain with the customer. However, as the DPS has pointed out, a significant percentage of Efficiency Vermont's business customers have granted Efficiency Vermont permission to make project-specific information public. An EEU should explore methods of making this information more readily available to other customers. IBM and the DPS have suggested two possible methods of doing so (posting a list on a website, and conducting a forum for businesses to share ideas and projects). I recommend that the Board determine that an EEU should work with stakeholders to identify and implement means of making project-specific information (for those projects whose customers have granted permission to make the information public) more readily available to other customers. In addition, it may be possible to increase the percentage of customers who agree that their project-specific information could be made public. I recommend that the Board determine that an EEU should work with stakeholders to try to identify and implement means of doing so.

The Board also directed that further proceedings be conducted on whether any more information regarding this issue should be included in an Order of Appointment. The DPS recommended that an Order of Appointment include a statement regarding an EEU's responsibility to provide general information to the public to: (1) increase consumer awareness

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49. Letter from Walter (TJ) Poor, Energy Program Specialist, DPS, to Susan M. Hudson, Clerk, Board, dated May 7, 2010 at 1-2.

50. Letter from Morris L. Silver, Esq., on behalf of CVPS, to Susan M. Hudson, Clerk, Board, dated May 7, 2010.

and understanding of the benefits of reducing energy use, and the best technologies available to them; and (2) refer them to information and resources other than the EEU. The DPS asserted that such language provides the framework for an EEU to disseminate project-specific information while also providing flexibility for an EEU to protect the confidentiality wishes of its customers. The DPS added that stakeholders could identify any specific actions that an EEU should take to disseminate information and facilitate the sharing of ideas and efficiency strategies in the DRP proceeding.<sup>51</sup>

In the November 24 Order, the Board found that an EEU should be responsible for providing general information to the public, as recommended by the DPS.<sup>52</sup> The language the DPS recommended be included in an Order of Appointment does provide a reasonable general framework for this issue. Specific actions are more appropriately addressed in the DRP proceeding, rather than in an Order of Appointment. Therefore, I recommend that the Board determine that no additional language regarding the provision of project-specific information to the public should be included in an EEU's Order of Appointment.

#### **IV. CONCLUSION**

In this Proposal for Decision, I make recommendations to the Board regarding the 12 specific substantive issues included in the Phase 2 Issue Resolution track. It is appropriate to bring these issues to the Board for resolution now so that the Board's decisions regarding these specific issues can be incorporated into the model Order of Appointment and the Comprehensive Document that parties are currently developing.

I further recommend that the Board remand this Docket to me for further proceedings including, among others, the development of the Comprehensive Document that describes the overall EEU program structure under the Order of Appointment model.

This Proposal for Decision has been served on all parties to this proceeding in accordance with 3 V.S.A. § 811.

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51. Letter from Walter (TJ) Poor, Energy Program Specialist, DPS, to Susan M. Hudson, Clerk, Board, dated May 7, 2010, at 2.

52. Order of 11/24/09 at 66 (finding 113).

Dated at Montpelier, Vermont, this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

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Ann Bishop  
Hearing Officer

## **V. BOARD DISCUSSION**

The Hearing Officer's Proposal for Decision makes findings and recommendations regarding numerous issues related to the implementation of an Order of Appointment structure. Most of these findings and recommendations were not commented on by any party, and we hereby accept all of them, except as noted below.

The DPS and VEIC filed comments on the Hearing Officer's Proposal for Decision.<sup>53</sup> Both parties provided comments on: (A) the threshold amount of additional funding – review of goals, performance indicators or service offerings; and (B) an EEU's consideration of electro-technologies. The DPS also commented on: (C) the assignment of the Contract Administrator's functions; and (D) an EEU's role with respect to geographically targeted programs. VEIC also commented on (E) the guidelines for customer-sited generation and combined-heat-and-power projects. We address each of these items in turn, then discuss (F) an issue related to the provision of advance notice for revocation of an EEU's appointment due to a material breach of the terms of its appointment or because of bankruptcy.

### **A. Threshold Amount of Additional Funding – Review of Goals, Performance Indicators or Service Offerings**

Both the DPS and VEIC noted that Group A's recommendation on this issue, upon which the Hearing Officer relied, incorrectly characterized the current agreement between the DPS and VEIC regarding the process currently used if additional funds are acquired by the EEU that are less than 5 percent of the relevant (electric or heating-and-process-fuels) budget.<sup>54</sup> VEIC states that there is a contract formula for recalculation of goals based upon adjustment to funding, but there is no provision specifying a five-percent threshold related to this recalculation. In practice, according to VEIC, when available funding levels increase or decrease, the contract is amended to reflect a corresponding change in goals, based on the recalculation formula.

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53. Letter from Walter (TJ) Poor, Energy Program Specialist, DPS, to Susan M. Hudson, Clerk, Board, dated June 11, 2010 ("DPS Comments on PFD"); and letter from Blair Hamilton, Policy Director, VEIC, to Susan Hudson, Clerk, Board, dated June 11, 2010 ("VEIC Comments on PFD").

54. DPS Comments on PFD at 1-2; VEIC Comments on PFD at 1-2.

However, both the DPS and VEIC refer to Program Implementation Procedure ("PIP") 79, which took effect earlier this year. PIP 79 provides, in part, that

If the total amount of the external funding is less than 5% of [Efficiency Vermont's] portion of either the [heating-and-process-fuels] or EEC annual budget for the year in which the new external funding would begin, modification of the [Efficiency Vermont] contract shall not be required and the external funding need not be included in Board approved [Efficiency Vermont] budgets.<sup>55</sup>

VEIC asserts that the current contract sets a five-percent threshold for EEU carryover requests,<sup>56</sup> and that consistency in the treatment of funding changes, regardless of source, would be preferable. According to VEIC, the policy described in the PIP would be easier to administer than Group A's original recommendation.<sup>57</sup>

The DPS states that the PIP was agreed to by the DPS, VEIC and the Contract Administrator in part to facilitate operations in the context of the current contract, and in light of the somewhat unwieldy contract-amendment process. According to the DPS, under an Order of Appointment, the Board could adjust performance goals using a formulaic approach without the complex administrative process associated with a contract amendment. Therefore, the DPS recommends that the Board adopt the Group A suggestion of adjusting goals using a formulaic approach if there are budget increases of less than 5 percent. The DPS asserts that the specific formula to be used should be developed as part of the DRP. The DPS also recommends that a formulaic adjustment in goals should be applied if a small decrease in funding were to occur (for example, if estimates of revenues from the Forward Capacity Market or the Regional Greenhouse Gas Initiative were too high, requiring a change in the heating-and-process-fuels budget). Finally, the DPS contends that these adjustments should apply only when an EEU secures

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55. DPS Comments on PFD at 1-2, VEIC Comments on PFD at 2, both citing PIP 79 which was attached to VEIC Comments on PFD.

56. We hereby take official notice of the Board's current contract with VEIC to serve as the EEU, which is posted to the Board's webpage at: <http://psb.vermont.gov/docketsandprojects/eeu/rfpsandcontracts/2009-2011/eeucontract>. Any objections to our taking such notice should be included in a motion to reconsider this Order.

Paragraph 12.B of Attachment M of this contract provides that requests to carry forward unspent *Contractor Electric EEU Funds* (a defined term in the contract) are required only if the unspent *Contractor Electric EEU Funds* for a year are greater than 5 percent of the total *Contractor Electric EEU Funds* available in that year. If the unspent funds are below that threshold, the funds are automatically carried forward to the next year.

57. VEIC Comments on PFD at 2.

funding to be used for services or initiatives substantially similar to its current operations. According to the DPS, if the funding is for services and initiatives that are substantially different than the scope of work already agreed to under the Order of Appointment, modification of the goals should not be required, and modification of the Order of Appointment should be considered on a case-by-case basis.<sup>58</sup>

Both VEIC and the DPS have pointed out a factual error in Group A's recommendation regarding this issue, which is reflected in finding 12 in the Proposal for Decision. To correct this error, we delete the phrase "as is done under the Board's current contract with VEIC, and" from this finding. With this change (and with the omission of footnote 21 which requested that parties comment if the Hearing Officer had interpreted Group A's recommendation incorrectly), finding 12 now reads:

12. If any individual source of additional funds is less than 5 percent of the relevant budget, the Board should not be required to examine whether goals should be adjusted. However, if any individual source of additional funds for resource-acquisition activities is less than 5 percent of the EEU's resource-acquisition budget, performance goals should be adjusted on a formulaic basis, as would be determined when future performance indicators are developed.

Despite the factual error in Group A's original recommendation, we conclude that the basis for its recommendation is sound, and that the recommendation should be adopted. In our November 24 Order, we stated that it was not in the ratepayers' interest to have a potentially expensive and protracted process for deciding whether any changes to performance goals are appropriate. While formulaic changes to performance goals will require some administrative action, they will not require a potentially expensive and protracted process. We determine that the benefits to ratepayers (and an appointee) of making formulaic changes to performance goals when an EEU acquires additional funds that are less than 5 percent of its resource-acquisition budget (or when available funding for such activities is up to 5 percent less than originally estimated) outweigh the likely small costs associated with the administrative action associated with making the formulaic changes. Therefore, we adopt the Hearing Officer's recommendation on this issue, with one clarification. As the DPS contends, such formulaic adjustments should

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58. DPS Comments on PFD at 2.

apply only if the additional funding is to be used for services or initiatives substantially similar to an EEU's current operations. If the funding is for services and initiatives that are substantially different from its current operations, then formulaic adjustments should not automatically be made, and modification of performance goals, performance indicators and service offerings should be considered on a case-by-case basis.

#### B. EEU's Consideration of Electro-Technologies

Both the DPS and VEIC support the Hearing Officer's recommendations regarding allowing an EEU to consider electro-technologies, and determining the appropriate funding source for such projects through traditional mechanisms such as PIPs or the Technical Advisory Group.<sup>59</sup> However, they point out an inaccuracy in the Proposal for Decision. Specifically, on page 30, the Hearing Officer states "consideration of electro-technologies by an EEU is a new development that will begin with the first Order(s) of Appointment." According to both VEIC and the DPS, Efficiency Vermont currently considers electro-technologies in its provision of services. For example, Efficiency Vermont currently offers incentives for an Energy-Star-qualified ground-source heat pump for residential new construction applications,<sup>60</sup> and with heating-and-process-fuels funding there is the potential for an EEU to provide incentives for a customer to switch from a fossil-fuel-based system to a ground-source heat pump.<sup>61</sup>

In light of VEIC's and the DPS's comments, we conclude that the Hearing Officer's characterization of an EEU's consideration of electro-technologies as a "new development" was incorrect. Furthermore, we determine that nothing in this Order will alter an EEU's current ability to consider electro-technologies in its provision of services. However, we do conclude that widespread support of electro-technologies in the future would be a new development, and should it occur, it would be appropriate for the DPS's program evaluation to address this practice. In addition, we adopt the Hearing Officer's conclusions that: (1) it may be necessary to address whether an EEU should use electric efficiency funds or monies earmarked for heating-and-

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59. DPS Comments on PFD at 3; VEIC Comments on PFD at 2.

60. VEIC Comments on PFD at 2.

61. DPS Comments on PFD at 4.



process-fuel efficiency to fund electro-technologies that result in increased electric consumption, and (2) this issue is well suited to being addressed through traditional mechanisms such as PIPs or the Technical Advisory Group, provided that the Board is notified of any changes to PIPs that address cost-allocation issues between electric and heating-and-process-fuel efficiency funds.

### C. Assignment of Contract Administrator's Functions

The DPS supports the Hearing Officer's recommendation that an EEU not be required to inform the Board of: (1) substantive changes to IT systems; (2) new or proposed changes to PIPs (with the exception of PIPs that address cost allocation between electric efficiency and heating-and-process-fuel efficiency funds); and (3) changes to an EEU's Confidential Management Information System. The DPS proposes that an EEU continue to inform the DPS of such changes.<sup>62</sup> The DPS's comments and proposals regarding these three items are consistent with the assignment of the Contract Administrator's responsibilities shown in Appendix A to the Proposal for Decision, and we hereby accept this recommendation by the Hearing Officer.

The DPS also supports the Hearing Officer's recommendation that the review and approval process for changes to an EEU's service quality and reliability plan be the same as the process for changes to an electric utility's service quality and reliability plan.<sup>63</sup> We also accept this recommendation by the Hearing Officer.

In addition, the DPS supports the Hearing Officer's recommendation that the Board direct Board staff to engage in administrative discussions outside of this Docket to address in more detail the process for invoice approval. However, the DPS asserts that invoice approval may be closely tied to the structure of compensation for some EEUs. Therefore, according to the DPS, it will be important that decisions made in the administrative discussions remain focused on the administrative issues and not include issues related to the compensation of an EEU which will be addressed in the draft Comprehensive Structure and Order of Appointment documents now under development in this Docket.

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62. DPS Comments on PFD at 2.

63. DPS Comments on PFD at 3.

We hereby direct Board staff to engage in administrative discussions outside of this Docket to address in more detail the process for invoice approval. We concur with the DPS that it is important that these administrative discussions not stray into issues that remain under consideration in this proceeding. Therefore, we expressly caution Board staff and others engaged in the administrative discussions to be mindful of the necessary limitations on the subjects that can be addressed in those discussions.

#### D. EEU's Role with Respect to Geographically Targeted Programs

The DPS supports the Hearing Officer's recommendation that the Board clarify that if an EEU were no longer to provide geographically targeted services, an electric utility would once again be responsible for planning and delivering energy efficiency services as part of distributed utility planning.

The DPS also addresses the Hearing Officer's statement that it is likely that the results of the DPS's evaluation of the EEU's geographically targeted programs will address whether such programs should continue. The DPS clarified that the

. . . broad goal for the multi-faceted evaluation is to provide a 'proof of concept' to understand what intensive energy efficiency efforts can deliver in a targeted area, the speed with which energy efficiency savings can be attained, and the cost to achieve such savings.<sup>64</sup>

According to the DPS, the evaluation is unlikely to provide a definitive answer as to whether geographically targeted programs should continue. However, according to the DPS, the evaluation will inform such a decision, which could be made as part of the DRP proceeding.<sup>65</sup>

The Hearing Officer made the statement regarding the results of the DPS's evaluation of the EEU's geographically targeted programs in the context of considering whether to resolve certain issues regarding the EEU's role with respect to such programs in this Order, or to wait until the evaluation of those programs was complete.<sup>66</sup> With the DPS's clarification of the goal for the evaluation in mind, we conclude, as the Hearing Officer did, that it is appropriate to

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64. DPS Comments on PFD at 3, citing DPS "Evaluation Plan for the Geographically Targeted Energy Efficiency Programs in Vermont" that was filed with the Board on May 11, 2010.

65. DPS Comments on PFD at 3.

66. See p. 22, above.

resolve the issues related to the EEU's role with respect to geographically targeted programs in this Order. Furthermore, we adopt all of the Hearing Officer's specific recommendations related to an EEU's role with respect to geographic targeting programs.

#### E. Guidelines for Customer-Sited Generation and Combined-Heat-and-Power Projects

VEIC states that the guideline document that was attached to the Proposal for Decision as Appendix B specifies that projects with a "nominal generation capacity over 500 kW" require DPS approval prior to being eligible for EEU funding. VEIC recommends that the Board clarify whether this capacity represents pre- or post-conversion capacity (that is, raw-generation capacity or connected-generation capacity). Specifically, VEIC recommends that the Board clarify that the capacity is post-conversion/connected-generation capacity.

The clarification requested by VEIC is reasonable, and we hereby adopt it. In addition, we modify Appendix B to this Order to reflect the clarification.

Furthermore, in reviewing Appendix B, we notice that on page B-2, the beginning of the paragraph following the list of benefits to be considered in the cost-benefit analysis now reads: "Any other verifiable costs or benefits that are directly attributable to serving or the successful operation of the CHP system."<sup>67</sup> This sentence is incomplete, or at least unclear ("serving" what or whom?). We, therefore, direct the parties to file a revised version of Appendix B for Board approval that clarifies this sentence. A joint filing is preferable.

#### F. Advance Notice of Revocation of EEU's Appointment

The Hearing Officer recommended that we adopt Group A's recommendation that an Order of Appointment not include a requirement for advance notice for revocation of an EEU's appointment due to a material breach of the terms of its appointment or because of bankruptcy. The Hearing Officer also found that any Board process that could lead to a revocation of an Order of Appointment should allow interested persons to comment.<sup>68</sup>

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67. This sentence was included as is in the attachment to Group A's recommendation, as well as the versions of the CHP guidelines that were attached to all three Draft Recommendations that are in evidence in this proceeding.

68. See finding 5, above.

We agree with the Hearing Officer's intent to provide the Board with maximum flexibility to act in the best interest of Vermonters, should such a situation occur. However, we are concerned that the Hearing Officer's recommendation could be interpreted to imply that we would not notify an EEU that we were considering revoking its appointment. Therefore, we clarify that we will provide an EEU that has materially breached the terms of its appointment or is in bankruptcy advance notice that we are considering revoking its appointment. This will enable that EEU to request a hearing, if it so chooses, as provided for in 30 V.S.A. § 209(d)(5).<sup>69</sup> As recommended by Group A, we will allow interested persons to comment in any such process that could lead to a revocation of an Order of Appointment.

We also determine that an Order of Appointment should not include a requirement for a set period of advance notice for revocation of an EEU's appointment due to a material breach of the terms of its appointment or because of bankruptcy. In other words, a revocation of an EEU's appointment for one of these causes could be effective immediately (as opposed to 18 months later as we determined in our November 24 Order to be appropriate if the Board were to terminate an EEU's appointment early for certain other reasons).<sup>70</sup>

## **VI. ORDER**

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The findings and conclusions of the Hearing Officer are adopted, except as modified above.
2. If the Initial Overall Performance Assessments ("OPAs") result in a decision to solicit competitive bids for Energy Efficiency Utility ("EEU") provider(s), then the first Order of Appointment shall commence in 2012, with the current EEUs providing efficiency services through the end of 2011 under the existing arrangements. Under this scenario, the three-year cycle of performance periods and the first Overall Performance Assessments ("OPAs") during the

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69. The relevant portion of 30 V.S.A. § 209(d)(5) states: "For good cause, after notice and opportunity for hearing, the board may amend or revoke an order of appointment."

70. Order of 11/24/09 at 49.

Order of Appointment shall occur consistent with the schedule outlined in the November 24 Order.

3. If the Initial OPAs result in a determination that the incumbents should be awarded Orders of Appointment, the Board will issue 12-year Orders of Appointment to the incumbents effectively immediately upon issuance. Under this scenario, the balance of time from the date of the Order of Appointment through December 31, 2011, shall be considered a "Transition Period."

4. The following terms shall govern any Transition Period:

- During the Transition Period, budgets, goals and performance indicators shall remain as they are at the commencement of the Transition Period, unless there is a change to those goals and performance indicators that is pending at that time. If there is a pending change, that change shall be allowed to be completed during the Transition Period.
- During the Transition Period, the EEUs shall be allowed to extend their scope as specified in the Orders of Appointment, but only to the extent they are able to do so with currently available resources.
- The initial Demand Resources Plan ("DRP") proceeding will be commenced after the Orders of Appointment are issued, with the goal of completing it by May of 2011 in order to allow for determination of budgets and goals for the next performance period.
- As part of the transition process, the EEUs shall begin budgeting, accounting and tracking separately for "resource-acquisition" and "non-resource-acquisition" activities. For the Transition Period, this shall be comprised of re-categorizing costs within each EEU's existing budget for 2011. These reorganized 2011 budgets shall provide a useful baseline for setting non-resource-acquisition budgets as part of the first DRP process.
- The first Three-Year Performance Period under the Orders of Appointment shall be the calendar years of 2012-2014 and continue every three years thereafter.
- The first OPAs under the Orders of Appointment shall occur in the latter half of 2015. These OPAs shall review performance in (at least) the 2009-2011 and the 2012-2014 periods.
- Following the 2015 OPA, the Board will determine whether to issue a new 12-year appointment beginning January 1, 2016, or to begin a solicitation process.

5. The Board will initiate a DRP proceeding in August 2010 or as soon as practicable after the Board issues its determinations in the Initial OPA processes, with the goal of completing the DRP proceeding by May 2011.

6. An Order of Appointment shall not require a set period of advance notice for revocation of an EEU's appointment due to a material breach of the terms of its appointment or because of bankruptcy. Any Board process that could lead to a revocation of an Order of Appointment shall allow interested persons to comment.

7. One statewide DRP shall be developed and adopted by the Board. If there are multiple EEUs, the statewide plan shall identify separate budgets for each EEU.

8. With respect to any "unanticipated additional funding" (defined as any funding secured by an EEU through means other than carrying out operational responsibilities of the Order of Appointment) that an EEU obtains to perform activities within the scope of the EEU's Order of Appointment:

- An EEU shall inform the Board and the Department of Public Service ("DPS") of any such unanticipated additional funding. An EEU shall indicate whether any individual source provides funds greater than 5 percent of that EEU's resource-acquisition or non-resource-acquisition budget (depending upon the scope of activities to be funded). If any individual funding source provides funds for activities already supported by the Energy Efficiency Charge ("EEC"), an EEU shall indicate whether these funds are greater than 5 percent of that EEU's annual EEC-funded budget (defined as an EEU's budget as set by the most recent Board Order plus any authorized carryover).
- If the additional funds are greater than 5 percent of an EEU's annual EEC-funded budget, the Board shall examine whether EEC collections should be adjusted. If the funds are less than 5 percent of an EEU's annual EEC-funded budget, the Board will not be required to examine whether EEC collections should be adjusted. This general principle shall not prohibit any party from requesting that the Board examine whether EEC funds should be adjusted.
- If any individual source of additional funds is greater than 5 percent of the resource-acquisition or non-resource-acquisition budget (depending upon the scope of activities to be funded), the Board shall examine whether performance goals, performance indicators, and service offerings should be adjusted. If any individual source of additional funds is less than or equal to 5 percent of the relevant budget (resource-acquisition or non-resource-acquisition), the Board shall not be required to examine whether goals, indicators and service offerings should be adjusted. However, if any

individual source of additional funds for resource-acquisition activities that are substantially similar to an EEU's current operations is less than or equal to 5 percent of that EEU's resource-acquisition budget, performance goals shall be adjusted on a formulaic basis, as would be determined when future performance indicators are developed. If any individual source of additional funds for resource-acquisition activities that are substantially different from an EEU's current operations is less than or equal to 5 percent of that EEU's resource-acquisition budget, performance goals shall not be adjusted on a formulaic basis; in this circumstance any changes to performance goals shall be considered on a case-by-case basis. These general principles shall not prohibit any party from requesting that the Board examine whether performance goals, performance indicators and service offerings should be adjusted.

9. Those functions now performed by the Contract Administrator that will continue to need to be performed in an Order of Appointment model shall be reassigned to the Board, the DPS, and the EEU(s) in accordance with Appendix A to this Order.

10. Appropriate Board staff shall engage in discussions outside of this Docket with the DPS, the EEU Fund Fiscal Agent, the Contract Administrator and the current EEUs (because of their experience with the invoice approval process) regarding the details of the process for invoice approval. These discussions shall not include issues related to the compensation of an EEU that remain under consideration in this Docket.

11. With respect to geographically targeted programs:

- The DRP shall identify and determine any areas to be geographically targeted by an EEU and any appropriate area-specific EEC adders (as described in Docket 7081) that the Board finds appropriate.
- To the extent that the Board authorizes an EEU to plan for and implement geographically targeted programs in a DRP, such activities shall satisfy the obligations of an electric utility under 30 V.S.A. § 218c to plan for and deliver such programs to meet the same supply problem or reliability deficiency. However, distribution utilities shall be required to continue to test the reasonableness of EEU estimates of efficiency resources available, projections of costs, and other recommendations, ensure the full funding of necessary efficiency measures (potentially through an EEC adder), and maintain the responsibility to select the mix of resources to be deployed to serve load and resolve supply problems and reliability deficiencies.

12. With respect to an EEU's role in combined-heat-and-power ("CHP") projects:

- An EEU shall follow the Guidelines for Customer-Sited Generation and Combined Heat and Power Projects that are included in Appendix B to this Order.
- The appropriateness of a risk adjustment when performing cost-effectiveness screening of CHP projects shall be further considered in appropriate future proceedings, such as those that might address externalities and risk for all demand-side resources. Until such time as a new risk adjustment is adopted by the Board, cost-effectiveness screening of CHP projects shall not include a risk adjustment.

13. On or before July 9, 2010, parties shall file a revised version of Appendix B that clarifies the following sentence: "Any other verifiable costs or benefits that are directly attributable to serving or the successful operation of the CHP system."

14. An EEU that is not a distribution utility shall follow the Guidelines for an EEU's Responsibilities Regarding Demand Response that are included in Appendix C to this Order.

15. With respect to an EEU's consideration of electro-technologies:

- An EEU shall consider both electro- and non-electro-technologies when assessing the cost-effectiveness of consumer end uses and potential efficiency measures. If consideration of electro-technologies requires the development of policy guidance on the appropriate usage of different types of efficiency funds, such guidance shall be pursued through traditional mechanisms such as the Technical Advisory Group, PIPs, or other appropriate means.
- The potential for both electro- and non-electro-technologies shall be considered in the DRP and an EEU's Order of Appointment scope of work.

16. The concept and remaining details of the DRP (that is, those details not resolved in this Order) shall be discussed and resolved later in this Docket in the context of the development of the "Comprehensive Document" that describes the overall EEU program structure under the Order of Appointment model.

17. With respect to making customer-specific information regarding projects publicly available:

- An EEU shall work with stakeholders to identify and implement means of making project-specific information (for those projects whose customers have granted permission to make the information public) more readily available to other customers. An EEU shall work with stakeholders to try to identify and implement means of increasing the percentage of business customers who grant an EEU permission to make project-specific information public.



- An EEU's Order of Appointment need not include language regarding the provision of project-specific information to the public beyond the general language from the Draft Recommendations regarding the EEU's responsibility to provide general information to the public.

18. This Docket is remanded to the Hearing Officer for further proceedings.

Dated at Montpelier, Vermont, this 25th day of June, 2010.

<u>s/ James Volz</u>	)	
	)	PUBLIC SERVICE
	)	
<u>s/ David Coen</u>	)	BOARD
	)	
	)	OF VERMONT
<u>s/ John D. Burke</u>	)	

OFFICE OF THE CLERK

FILED: June 25, 2010

ATTEST: s/ Susan M. Hudson  
Clerk of the Board

*NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)*